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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re AARON L. et al., Persons Coming  
Under the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

RONALD L.,

Defendant and Appellant.

A133764

(Contra Costa County  
Super. Ct. No. J11-00544)

Following a contested interim review hearing, the juvenile court awarded sole physical and legal custody of minors Aaron L. and A.L. to mother D.M.— a deviation from the recommendation of the Contra Costa County Children and Family Services Bureau (Bureau) that D.M. and father Ronald L. share legal custody. Ronald appeals, contending he had inadequate notice that the court was considering awarding D.M. sole legal custody. He further argues that, notice issues aside, the court’s decision regarding legal custody constituted an abuse of discretion. We conclude that neither argument has merit, and we affirm.

## **BACKGROUND**

### **Jurisdiction**

On March 28, 2011, officers from the Antioch Police Department conducted a health and safety check at Ronald's home, where he lived with his then 11-year-old son Aaron and seven-year-old daughter A.L. The officers found a garage littered with dog feces and garbage, and a house that was filthy and virtually uninhabitable. There were guns and ammunition in the house, much of which was accessible to the children. A camera found in the house contained pictures of the children posing with firearms. Ronald was arrested for being a convicted felon in possession of firearms and taken into custody, and the children were detained in out-of-home placement.

The following day, a social worker from the Bureau met with D.M., who lived with her current husband, Mr. M., and their two children. She explained that Ronald had sole physical custody of Aaron and A.L. because of a restraining order protecting the children from Mr. M. D.M. admitted that she and Mr. M. had a history of domestic violence, but further advised that she had completed a parenting class, drug testing, and anger management training, while Mr. M. had completed parenting and anger management training.

A jurisdictional report subsequently prepared by the Bureau noted additional concerns: the children had excessive absences from school, were unbathed, wore the same clothes for a week at a time, and slept together in a bug-infested bed. Additionally, Aaron had been bitten by one of Ronald's dogs and did not receive medical attention, and A.L.'s teeth were decaying and she had not been seen by a dentist. The report also noted that the children had told D.M. about the conditions at their father's house but that she had not taken action to address them.

On March 30, 2011, the Bureau filed a Welfare and Institutions Code<sup>1</sup> section 300 petition, alleging that Ronald failed to provide for the children and that D.M. failed to

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code except where otherwise noted.

protect the children from Ronald's neglect. At a detention hearing the following day, the juvenile court ordered the children detained. Both parents subsequently pleaded no contest to an amended petition.

### **Disposition**

In a May 13, 2011, disposition report, the Bureau advised that the children were placed together in the same foster home. Ronald was still incarcerated, and D.M. had been visiting with the children weekly. She had also enrolled in a parenting class and found a therapist, advising the Bureau that she would do whatever was necessary to have the children returned to her care. The Bureau recommended family reunification services for both parents.

A June 1, 2011 memorandum from the Bureau to the court provided insight into a prior dependency proceeding that resulted in Ronald receiving sole physical custody of Aaron and A.L. According to the Bureau, a section 300 petition was filed on November 2, 2006, after an incident in which Mr. M. pinned D.M. against her car, verbally assaulted her, and threatened her with physical violence while Aaron and A.L. watched. The children initially remained in D.M.'s custody, but she followed Mr. M. to Colorado, taking the children with her against court order. After the children were located and returned to California, they were placed in out-of-home care. D.M. and Mr. M. returned to California in June 2007, and D.M. engaged in reunification services. However, she refused to live apart from Mr. M. (whom she had since married), and in April 2008, Ronald was granted sole physical custody.

At a June 3, 2011 disposition hearing, the court declared the children dependents of the juvenile court and ordered family reunification services.

### **D.M.'s Section 388 Request**

On June 6, 2011, D.M. filed a section 388 request to change court order, seeking 30 consecutive overnight visits, a request the court denied.

### **Interim Review**

An interim review hearing was set for August 16, 2011. In a status report prepared for the hearing, the Bureau recommended that D.M. be granted full physical

custody and joint legal custody, and that the dependency be terminated. It noted that the children were doing well in their placement, but that they exhibited a “significant positive difference” in their attitude and emotional presentation after visits with their mother. The children expressed a desire to live with her and were looking forward to seeing their stepfather as well. D.M. and Mr. M. were participating in weekly couples counseling to improve their communication skills. D.M. was allowed unsupervised visits with the children, while Mr. M. was allowed supervised visits.

At the August 16 hearing, counsel for Ronald requested a contested hearing, which was set for September 20, 2011. The court also approved 30 consecutive overnight visits with D.M.

On September 14, 2011, the Bureau submitted a memorandum to the court providing additional information regarding the domestic violence history between D.M. and Mr. M. According to the Bureau, Mr. M.’s only arrest for domestic violence followed the 2006 incident. Records did show, however, that in 2008, D.M. obtained a temporary domestic violence restraining order against him, forbidding contact between him and the child he and D.M. had together. D.M. did not seek a permanent restraining order, nor did it appear that Mr. M. was arrested for any incident that precipitated the temporary restraining order.

On September 20, 2011, the contested hearing was continued to October 18 to allow the Bureau to confirm the services D.M. had completed, to view D.M.’s home, and to speak with Ronald. The court approved another 30-day visit.

On October 5, 2011, the Bureau submitted another memorandum, this one detailing the results of a May 24, 2011 domestic violence assessment of D.M. and Mr. M. The assessment concluded that there was no indication “that there has been any domestic violence in this relationship since 2008 and that the ‘markers’ evident in the history of this couple do not correlate to elevated risk of further domestic violence.”

### **Contested Interim Review Hearing**

On October 18, the court held a contested interim review hearing. At the outset, counsel for the children described a recent visit to D.M.’s house, where she had a chance

to observe Aaron and A.L., as well as their two half-siblings. She described finding a happy home, where the children shared a “beautifully organized” bedroom that D.M. kept clean for them. Counsel advised the court that the children missed Ronald and were very anxious to see him upon his release from jail. She, cautioned, however, “that they think bad things happen when their dad is out and he’s around Mr. M. They said that daddy’s very angry, and they are very concerned that something’s going to happen to their dad or to Mr. M. because of the relationship between these two. [¶] I told them that I thought it was possible to make sure they had lots of contact with their Daddy and with Mr. M., but that we would make sure that the two don’t come in contact with each other. And Aaron specifically seemed very relieved about that.” Counsel went on to describe how well the children got along with each other and their half-siblings, how well they were doing in school, and how happy they were to be home with their mother.

Counsel for Ronald then called D.M. as the first witness. She acknowledged that there had been episodes of domestic violence between her and Mr. M. “[o]n more than one occasion” and that she had spoken to Ronald about those episodes. She conceded that she had suffered injuries in one of the incidents and that she asked Ronald for assistance in obtaining a restraining order to protect her children from Mr. M., but she denied that he took photographs of any injuries inflicted by Mr. M. Shown photographs of herself with facial injuries, she confirmed that Ronald took them, but claimed that they depicted injuries she suffered when one of Mr. M.’s coworkers punched her at a company picnic. When asked how many times there had been physical altercations between her and her husband, she answered “[o]nce or twice,” with the last incident being “[a] long time” ago.

D.M. testified that there were also incidents of arguing, but she and Mr. M. had gone to counseling to learn how to address issues as they arose and learn “tools and techniques . . . to deal with those things.” She had sought domestic violence counseling in 2007 during the prior dependency, and resumed it in April 2011 in light of the current dependency proceeding. Mr. M. attended four sessions as well.

Ronald's testimony followed. He testified that he had been in custody since March 28, with an anticipated release date of November 8. He was arrested for being a felon in possession of a firearm, the firearm being a "cap and ball antique like musket loader" and two firearms belonging to his 24-year-old son. According to Ronald, his felony conviction dated back to 1981, when he was convicted of aiding and abetting a robbery that he claimed he did not know was being committed.

Ronald disagreed with the Bureau's recommendation that the court dismiss the dependency proceeding because he felt there was still domestic violence occurring between D.M. and her husband. He claimed he took the photographs in March 2009 after Mr. M. assaulted D.M., leaving "red marks around her throat like hand prints." As he described it, "[T]here have [*sic*] been domestic violence between her and her husband ever since they have been together. I came and rescued her on three separate occasions when she's called me up screaming I need to go get her . . . out of there. [¶] Just in 2007 he choked her unconscious in the driveway. I came and got her." At her request, he helped her obtain a restraining order against Mr. M.

Ronald also described an incident in 2008, when D.M. called him and said that Mr. M. had hit her. He again picked her up and obtained papers for a restraining order, which she filled out but never turned in. He also testified to an incident in 2009 that resulted in injuries depicted in the photographs. According to Ronald, D.M. asked him to take the pictures so she could get a restraining order. She never told him that she was injured in a fight with a woman from Mr. M.'s company. Ronald acknowledged he was unaware of any incidents of domestic violence between D.M. and Mr. M. since 2009.

When asked on cross-examination if he had a friendly relationship with D.M., Ronald responded that he did until "she got me fired." As he explained it, despite a court order permitting her visitation only on Saturdays, they had an arrangement whereby she would go to his house in the morning to get the children, take them to and from school, take care of them after school, bathe them and get them ready for bed so he could go to work. Once when she did not show up on time, he was fired from a probationary position.

Also on cross-examination, Ronald was asked if he had ever told A.L. that D.M. was “a cheating whore who stole from” him. He denied ever telling his daughter that, claiming “[s]he might have overheard me on the telephone talking to somebody else.”

Lastly, the court asked Ronald about prior convictions. He admitted three prior convictions (auto theft, assault with a deadly weapon, and possession of a controlled substance) in addition to the aiding and abetting, but minimized each incident or denied his responsibility.

At the conclusion of testimony, counsel for the Bureau advised that the children were thriving in the placement with their mother. She asked that the petition be dismissed and that Ronald be granted supervised visits.

Counsel for the children followed with these observations about Ronald:

“[W]hen I was with the children, I couldn’t understand how concerned that Aaron was about Mr. M. and his father. After observing Mr. L. on the stand today I know where it’s coming from.

“This child is terrified that the stability and the nurturing he’s been getting is going to be taken away from him. He is concerned that his father’s going to continue to berate his—Mr. M. He is concerned—I mean I can’t believe the language he could use even if he says it wasn’t in front—I mean it wasn’t directed at the children, but that he would use that kind of language where they can hear it is unbelievable to me.

“These children are just too precious and too bright. And I—now the pieces are falling into place. Now I understand why Aaron suddenly got very quiet when I asked him how would he like the transition to be when he goes to see his dad.

“I don’t want there to be unsupervised visits between Mr. L. and his children at this time. They have spent time in foster care where they just thrive. They are back at home. They are thriving. I don’t want them filled with this kind of anger and poison.”

Counsel for D.M. concurred, asking the court to evaluate the credibility of both D.M. and Ronald:

“Ms. M. had admitted past problems with her husband. She’s admitted to the fact they’ve gotten counseling for past problems and that they even have issues in their marriage today [for] which they seek counseling.

“Mr. L., on the other hand, is less than forthcoming with information. Certainly would minimize any past criminal history he has although it appears that he’s not just a felon but perhaps a felon with multiple convictions. He certainly has convictions of the type that would question his credibility because they’re crimes of moral turpitude.

“And I would say that his anger that he displayed on the stand today while he was testifying is exactly the same kind of anger that has followed him throughout this case and prevented him from understanding how he got the children to this case this time this place. And he still doesn’t take responsibility.”

Counsel for Ronald objected to the Bureau’s recommendations, requesting that the court continue the case to allow for monitoring due to concerns about Mr. M.’s propensity for violence.

At the conclusion of the remarks, the court expressed its concerns about Ronald:

“First of all, I tell you I found Ms. M. to be completely credible. I found her very credible in her testimony. I found Mr. L. to be totally not credible.

“And if we’re talking about anger, Mr. L. has been furious since he stepped in this court. He is angry, an angry man. [¶] . . . [¶] I think he’s a very angry man. He radiates anger. He radiates anger every single time he comes to this court, and it is so directed at Ms. M. It is frightening. I am concerned about that for the safety of the children.

“We have here the children found in a home with a vicious dog who bites his own child twice. First of all, I’d get rid of the dog that bites my child. No, he keeps the dog that bit the child twice and doesn’t even take the child to get help. I mean there is a lot of repercussions that could happen from a dog that you don’t know why the dog bites.

“He has photos of the children posing with guns. He has—the children are filthy, absolutely filthy. Father is in denial about guns. The reports are very clear. I’ve read everything. All—every report on this. That there were guns found in a closet and easy

access for the children as well as in the safe. And by the way, there were no locking devices.

“The father says awful things about the mother. In reading back in the detention jurisdiction report I was struck by the question that I believe Ms. Lawrence asked which bothered me so much about the father calling the mother these derogatory names, and the father says, well, he wasn’t directing it at the children. I don’t doubt that he has called her every foul, filthy name for this entire time that he had them. I don’t doubt it a bit.

“He’s furious about whatever happened between him and Mr. M. and Ms. M. He’s furious about it. I don’t think he’s had his children’s best interest at heart. His anger at Ms. M. and . . . Mr. M. is coloring everything that he does. He is, as you said, whoever said it, he is a minimizer on all things. Nothing is his fault. Nothing was as it seems. Nothing was as it appears.

“I’ll tell you I am so glad you are back in this case, Ms. M. I am so happy for these children that you and Mr. M. and your very fine sounding home life and church life and children safe [*sic*]. That these children finally can see a way to live that isn’t in filth and isn’t exposed to guns and violence and filthy words. I am so happy.

“I’ve got a report from the minors’ attorney how very well the children are doing. And this is no slouch, this minors’ attorney. If she didn’t think that was good, I’d know in a heartbeat. She is absolutely very persuasive to this court, and she couldn’t be more strongly persuasive as how fabulous they are doing in your home. I am so pleased they finally have a taste at normalcy and what life can be like.

“My concern in this case is if I give physical custody—if I give legal custody to Father, that he will be in these children’s lives stirring up trouble, demanding that they—he sees every school record. Demanding that they do certain things, objecting to certain medical things. That he will be nothing but an obstructionist in these children’s lives.

“Now, I appreciate the fact that the children want to see their father, and I think that’s very very good. He is their father. He’ll be their father for life. But I am very concerned about this joint legal custody. That does give rights to Mr. L. that I am very concerned about given his anger.

“I actually feel he’s a danger in his anger. I feel he’s dangerous, and I feel he wouldn’t care who he took out as long as he took out Mr. M. or Ms. M. I think that—I don’t think he’d intentionally harm his children, but given the disgusting way he handled his children he certainly isn’t going to care that much. So I am concerned about that.

“I don’t want to give joint legal custody. I don’t want to give him the power to interfere in their lives any further which I think he is absolutely capable of doing, and he will lie to do it. And I think that would be very detrimental to these children who are finally in a safe, solid place.

“So I am going to follow the recommendations except I am not giving joint legal custody. I’m giving sole physical and sole legal custody to D.M.” The court ordered that Ronald have supervised visitation and then vacated the dependency and dismissed the petition. Custody orders awarding sole legal and physical custody to D.M. were entered that same day.

On November 8, 2011, Ronald filed a notice of appeal.

## **DISCUSSION**

### **Ronald Received Proper Notice**

In the first of two arguments, Ronald claims that he received inadequate notice that the court was considering deviating from the Bureau’s recommendation of joint legal custody. As he explains it, the Bureau had recommended joint legal custody with sole physical custody to D.M. At the contested hearing, neither the Bureau, D.M., nor counsel for the children voiced any concern over the joint legal custody recommendation. As such, he argues, he “had no notice that the legal custody order was at issue and had no opportunity to present evidence on the issue of legal custody.” To the contrary, he received adequate notice.

Section 362.4 provides in pertinent part that “[w]hen the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court . . . the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the child.” (See *in re T.H.* (2010) 190 Cal.App.4th 1119, 1122 [“When a juvenile court terminates its jurisdiction over a dependent child, it is

empowered to make ‘exit orders’ regarding custody and visitation.”]; *In re Robin N.* (1992) 7 Cal.App.4th 1140, 1146 [juvenile court had authority to order visitation with de facto parent when terminating dependency].)

Ronald does not dispute that he received notice of the hearing. Indeed, he requested the hearing, he appeared at the hearing, and his counsel was the only one to call witnesses to testify. He also does not dispute that he had notice that the Bureau was asking the court to vacate the dependency and dismiss the petition. The Bureau had recommended as much, and that recommendation was what prompted Ronald to request a contested hearing. And as section 362.4 provides, when the court terminates jurisdiction over a dependent child, it may issue an order determining custody and visitation arrangements. Ronald thus was on notice that custody—both legal and physical—and visitation were before the court at the October 18 hearing.

In arguing that the court’s order violated his due process and statutory rights to notice, Ronald cites to sections 385 and 388. Such citations are inapposite. Section 385 provides the dependency court with authority to modify orders as it deems proper, while section 388 allows a party to a dependency proceeding to seek to modify a prior court order based on changed circumstances or new evidence. Notice of the proposed or requested change is required under either section. But these sections do not avail Ronald here, since neither the court nor a party was seeking to change an existing order in the dependency proceeding.

Ronald also likens this case to *In re Michael W.* (1997) 54 Cal.App.4th 190, but the case is easily distinguishable. There, a section 300 petition alleged physical abuse by the mother, and the minor was placed with the father while the mother worked to ameliorate the issues that led to the dependency. The juvenile court later held a hearing to determine whether it was appropriate to terminate jurisdiction. The mother requested an evidentiary hearing to establish the progress she had made, but the court denied the request, granting sole physical custody to the father and terminating jurisdiction. A few days later, the mother again requested an evidentiary hearing, which request the court

again denied. The court subsequently entered its final order, granting both sole physical and legal custody to the father. (*Id.* at pp. 192-193.)

The Court of Appeal reversed, agreeing with the mother that she was entitled to an evidentiary hearing before the dependency court made its custody and visitation orders and terminated jurisdiction. (*In re Michael W.*, *supra*, 54 Cal.App.4th at p. 194.) This holding is inapplicable here, however, for the simple reason that in this case the court *granted* Ronald’s request for a contested hearing, at which hearing he presented evidence.

### **The Court Did Not Abuse Its Discretion In Awarding D.M. Sole Legal Custody**

As noted above, pursuant to section 362.4, a juvenile court terminating its jurisdiction over a dependent child may issue an order determining the custody of the child. We will not disturb such a custody determination “ ‘ “unless the [juvenile] court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination.” ’ ” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; see also *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) There was no abuse of discretion here.

The juvenile court made it abundantly clear that it was very concerned about Ronald’s anger and the danger it presented for the children: “Mr. L. has been furious since he stepped in this court. He is angry, an angry man. [¶] . . . [¶] I think he’s a very angry man. He radiates anger. He radiates anger every single time he comes to this court, and it is so directed at Ms. M. It is frightening. I am concerned about that for the safety of the children.” The court’s concerns were not speculative, as Ronald claims, but rather were based on its observations of Ronald’s demeanor and credibility when he testified. And the concerns were echoed by counsel for the Bureau, the children, and D.M. Under these circumstances, we cannot conclude that the legal custody order was “arbitrary, capricious, or patently absurd.”

### **DISPOSITION**

The custody order is affirmed.

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Richman, J.

We concur:

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Kline, P.J.

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Lambden, J.